

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TOMAS NOEL GUEVARA,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-10-027-W
)	
DAVID MILLER, Warden,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit. Pursuant to an order entered by United States District Judge Lee West, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B) and (C). Having reviewed said motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5. Because Petitioner does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion [Doc. No. 2] be denied and that he be ordered to prepay the full \$5 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). It is further recommended that this action be dismissed without prejudice to refiling unless Petitioner pays the \$5 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation.

Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by February 8, 2010, in accordance with 28 U.S.C. § 636 and Local Civil Rule 72. Petitioner is further advised that failure to timely

object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F. 2d 656 (10th Cir. 1991). The Clerk is hereby ordered not to forward a copy of the petition to the appropriate state agency until further order of the Court.

ENTERED this 19th day of January, 2010.



BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE